IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15852 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BD ZALA

Appearance:

1. Special Civil Application No. 15852 of 2003

MR NAGESH C SOOD for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 10/03/2004

ORAL JUDGEMENT

Though Rule is served, nobody appears on behalf of the respondent.

2. When the matter is taken up for confirmation of the interim relief, the main matter itself is taken up for final hearing today.

3. The present petition is preferred by the petitioner challenging the legality and validity of the award dated 6-7-2001 passed by the Industrial Tribunal in Reference (IT) No.304/1997, whereby the punishment imposed upon the workman is set aside and the Reference is allowed with the cost of Rs.500/=.

4. Mr.Sood, learned Counsel appearing for the petitioner, submitted that the inquiry was initiated and it was found that there was a misconduct of misappropriation of Rs.185.25 and the charges were proved and the order of stoppage of one increment with permanent effect was imposed by the disciplinary authority. Mr.Sood submitted that the Industrial Tribunal has not considered the said aspect and has allowed the Reference and, therefore, he submitted that the award passed by the Industrial Tribunal deserves to be quashed.

5. Upon query put by the Court the explanation submitted by the petitioner for not properly defending the proceedings before the Lower Court, Mr.Sood has no answer and even there is no detail produced on record showing as to why the matter could not be properly defended in the proceedings before the Industrial Tribunal. There are even no averments in the petition in this regard and the only ground is that the award ought not to have been passed by the Industrial Tribunal.

6. Considering the above, if the award passed by the Industrial Tribunal is considered, at para 6 it has been mentioned that the Corporation was granted two years' time to submit reply, but no reply has been submitted. It has also been stated by the Industrial Tribunal that it was the duty of the Corporation to produce necessary documents for supporting the action of punishment. However, no record of departmental inquiry is produced and, therefore, the Industrial Tribunal found that in absence of any inquiry against the workman concerned, it comes on record that the Corporation has not given any opportunity to the workman concerned before the imposition of penalty and, therefore, the award has been passed by setting aside the punishment imposed upon the workman concerned.

7. If a party who does not properly defend the proceedings before the Lower Forum, makes complaints

regarding the said award which appears to have been passed ex-parte since the said party did not avail of the opportunity which was given to it, this Court while exercising power under Article 227 of the Constitution of India would normally not encourage such litigant by entertaining the grievance. In the present case, it is a public Corporation which is aided with the law officer and lawyers. Once the Reference was made to the Industrial Tribunal, it was for the Corporation to submit written submission and also to produce the documents in support of the contention or to support the action of penalty imposed upon the workman. In the present case, as observed by the Industrial Tribunal, neither of the above is done and the only grievance raised in the petition is that the Industrial Tribunal ought not have passed the award. In my view, in absence of the documentary evidence regarding the departmental inquiry conducted by the petitioner, it cannot be said that the Industrial Tribunal has committed any error in exercise of the jurisdiction. If a penalty has been imposed upon the workman without there being any departmental inquiry, no fault can be found with the Tribunal which has taken the view that the penalty deserves to be quashed and set aside.

8. The aforesaid is coupled with the present facts and circumstances that even in the petition there is no explanation regarding, non-availing of the opportunity given by the Industrial Tribunal. Not only that, but the papers of the inquiry are also not produced on record before this Court. Mr.Sood, during the course of the hearing, has tried to produce the charge-sheet dated 7-12-1994 and the order No.27/1995 dated 13-2-1995 passed by the Divisional Transport Superintendent (Offence), whereby the report is given for non-deposit of the amount of Rs.185.25 and the same is titled as temporary misappropriation. Both these documents are placed on record. In my view, neither of the aforesaid documents throws light on any authenticated record for holding of the inquiry by the petitioner Corporation before imposition of the punishment upon the workman concerned. Therefore, in absence of any departmental inquiry brought on record or in absence of the material in respect to holding the departmental inquiry, the Industrial Tribunal was justified in concluding that the order of punishment cannot be maintained in the eye of law.

9. In view of the above, it cannot be said that the Industrial Tribunal has committed any jurisdictional error or that the discretion exercised by the Industrial Tribunal is so perverse which would attract the power of

this Court for setting aside of the award in exercise of the power under Article 227 of the Constitution of India. In view of the aforesaid I find that there is no merit in the petition and hence dismissed. Rule discharged. No costs.

10-3-2004 (Jayant Patel, J.)

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